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A

SPEECH

Without Doors,

In Behalf of an

INSOLVENT DEBTOR

IN THE

FLEET-PRISON.

WITH

Some REMARKS on the Preſent State of *GAOL-ARCHY.*

LIBERTAS

———— *Reſoluta catenis*
Incedit Virgo, pretiumque & cauſſa laboris.
Ovid Met.

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BRITISH MUSEUM
MAY

A

SPEECH, &c.

ALTHO', Gentlemen, it is common to our frail Natures to reckon our own Sufferings, and thoſe of our Friends greateſt, and moſt intolerable; yet to every *Britiſh* Subject this muſt be a certain Truth, that there is no ſeverer Miſery than to live in Chains; and what ſtill makes us more ſenſible of that Condition, is, becauſe at the ſame time we look down and behold our Fetters, and apprehend we ſhould naturally breathe a peculiar Spirit of Liberty, as being born in *Britain*; we then find our ſelves ſhackled in one of the Parts of *Europe* where Liberty is beſt eſtabliſhed, and moſt loudly talked of.

What ſtill urges the Hardneſs of this unfortunate Gentleman's Caſe, and renders it more deplorable, is, that what ſhould even make him moſt complain (which are his Chains,) thoſe Chains are the very Things which occaſion his Silence; for he is apprehenſive of being loaded ſtill with more upon his Complaint, and when he would privately ſet forth his Sufferings in writing, the Weight of them, and Fear of more, draw his Hand from the Paper.

His Priſon has already ſo far enfeebled his Mind, as to make him become a Daſtard when he ſhould moſt exert himſelf; but the Courage, which overwhelming Grief has, diveſted him of———, let Torture reſtore———. Nay, let a ſtronger Tie, the natural Care of a Parent, as he is the Father of many Children, howſoever miſerable he himſelf is to remain; let natural Affection, in Regard to them, and the few Friends he has ſtill in the World, urge him on to ſpeak.——

They, perhaps, if ſuch Failures in the Law are left unremedied, may, one time or other, be liable to his hard Fortune, after he is happily relieved by Death: Nay, for the ſake of *Britons* in general, let him remonſtrate in his own Behalf, ſince there is no Man who is not, by perſonal Privilege, out of the Iron Clutches of the too rigorous Abuſe of the Law, that can promiſe himſelf but this may be his own hard Lot, ſooner or later.

The Caſe of this poor Gentleman is thus: Upon his firſt ſetting out into the World he was poſſeſſed of an ample Fortune, no leſs than Two thouſand Pounds *per Ann.* and Forty thouſand Pounds in ready Money, deſcended to him from his worthy Anceſtors, and this ſupported by an Alliance to ſome of the nobleſt Families in the Kingdom.——His Calamities reſtrain me from mentioning them, leſt his unhappy Crime of being poor, (if that be a Crime) ſhould prejudice them by his preſent Condition.

This Gentleman, through the Profuſeneſs and Luxury of the Times, through falſe Friendſhips, daily Setts, and Artifices of deſigning Knaves, who have turned his generous Virtues to his Undoing, has imprudently ſquander'd away his Eſtate.——Alas! how difficult is it to keep a

juſt

juſt Medium! for had he been parſimonious, he would have been blamed for his Avarice.

The unfortunate Perſon who has fallen into the Snares that were laid for him, is now reduced to pine away in a loathſome and vile Priſon; and becauſe he has been ſo honeſt as to give up his All from a real Principle of Integrity, now for the want of five Guineas, as a Fee demanded by his mercileſs Gaoler, is turned over to the Common-Side, put into Irons, and chained down to the Floor.

Good God! how fluctuating are Riches? I appeal to the Perſon who is worth his Hundred thouſand Pounds —— Can he ſay he will anſwer for his Children, that ſome of them may not have the ſame Cataſtrophe of Fortune?— I appeal to any Peer —— to any Judge himſelf —— whether he can inſure his Poſterity, that they ſhall be exempt from it.

What avail the noble Struggles of our Anceſtors for Liberty! — What avail the Riſques and Dangers of the Seas? — The painful Hours of Induſtry in honeſt Trades, when Poſterity is liable, from an unguarded, and unexperienced Youth, to loſe that Liberty, and become a Prey, at length, to the avaricious Gaoler?

From a plentiful, and, I may add farther, a noble Fortune, to be confined more than any common Malefactor, nay, than a Traytor to his Prince or Country, and to be ſubject to the Extortions and Caprices of a cruel Gaoler, ſheltered under the Law, if not authorized by it: What tormenting Reflections muſt ſuch Circumſtances create?

Now, Gentlemen, it is my Buſineſs to prove, and I do not doubt but I ſhall be able to make it appear, that this is diametrically oppoſite to the Law of God — to the Rules of Reaſon and Juſtice — to the Law of Man, that ought to be founded on

Reaſon — That it is contrary to the Practice of all other Countries whatſoever, and againſt the Benefit and Good of the Commonwealth, and all Civil Societies.

For the Firſt, the Law of God: That appoints every Perſon ſtrictly to perform all Duties to the Honour of his Prince, his Country, and Parents; to provide in a juſt and legal Way, for his Wife, his Children, his Family; and to inſtruct, govern, and educate his Children in due Obedience, as well as in all the Principles of Humanity and Virtue.

Impriſonment of a Perſon incapacitates him to act this Fatherly Part; it prevents him in living and following his Calling, whatſoever it may be; it debars Husbands from cohabiting with their Wives and Children, nay, it puts them in a way of Life abandon'd to Idleneſs and Licentiouſneſs.

Therefore the Impriſonment of a Perſon is againſt the Law of God.

In the Law of the Old Teſtament (and I am ſure that no Syſtem of Laws ſurpaſſes it) 'tis abſolutely ſaid — *If thy Brother be waxen Poor, and fallen in Decay with thee, then thou ſhalt relieve him, and as a Stranger, and a Sojourner ſo ſhall he live with thee.* Levit.

In the Lord's Prayer, we pray to forgive our Debts, as we forgive our Debtors.

Therefore this inhuman Practice in *England* is not only repugnant to the Law of the Old Teſtament, but repugnant likewiſe to the Revealed Religion in the New.

If for want of Money we are to loſe our Liberty, and to be loaded with Chains, who will not venture any Danger whatſoever to obtain it? If this be the Caſe — Then Money is the only Tyrant of *Britain*.

If it can procure us thoſe ineſtimable Bleſſings, let us approach it (ſome will ſay) as a Deity, and accumulate it by any Means whatſoever.

A moſt notable Piece of Doctrine this, to ſuch as are not poſſeſſed of Money; a Doctrine, which if purſued, would bring many miſtaken brave Men, and deluded Lovers of falſe Liberty, to an ignominious Death.

Were a Man to be deprived of every Thing but Liberty, how would he hug himſelf with that ſingle Comfort, even after he has delivered up his All! Liberty no Man would exchange for any Conſideration, and the Loſs of it terminates in Death.

We ſee Multitudes of People daily flocking hither, who rejoice to fix their Habitation among the Tents of Freedom, when, to their Surprize, ſome of them find themſelves worſe ſhackled, than their former Fellow-Subjects, from whom they fled, who breathed only during the Pleaſure of the moſt Abſolute Prince; they find too, that it is even in the Power of the late Partners of their Voyages and Toils, *viz.* their Wives, to fling them into a perpetual Gaol, by a Law which may be compared to a baneful Plant, no *Exotic*, but peculiar to the Soil of *Great-Britain*.

I would farther, Gentlemen, calmly argue with any unprejudiced reaſonable Man, whether Debt is not ſufficiently puniſhed, by depriving the Debtor of the Privileges and Advantages that are annexed to, and inſeparable from an Eſtate in Civil Life. Muſt there yet be an Addition? Even the accumulative Weight of Impriſonment, to ſuch who are ſunk ſo low as to have all the negative Diſabilities upon them that Cuſtom and many Laws impoſe. I believe there is no ſuch Perſon living, whoſe Caſe it is to have loſt his Patrimony, whoſe ſevere Remorſes, at ſome Minutes (and few Hours eſcape thoſe Minutes of Reflection) are

not

not a ſufficient Puniſhment without the additional Torture of Confinement.

Gentlemen, it is againſt all the Rules of Reaſon and Juſtice; for Juſtice is founded on Reaſon, and all Laws which are againſt the Law of God, are alſo againſt the Rule of Juſtice; and it is againſt the Law of Nature, that Men equally born Free, ſhould be deprived of the common and equal Liberty, and be delivered into the Power of another, without criminal Cauſe or Guilt — For, let it be demanded of the Statute Law (I am ſure it is againſt *Magna Charta*, and the Fundamental Laws of the Land) to what end the Debtor is impriſoned; — It muſt be anſwer'd, It is either for Puniſhment, or Coercion.

If for Puniſhment, it is againſt the Rule of Juſtice — To be found a Debtor in the Law is no criminal Guilt, and therefore it is an unjuſt Thing, to puniſh him criminally, that hath not criminally offended.

If for Coercion, to make the Debtor produce his Eſtate, in order to pay the Debt, it is againſt the Rule of Juſtice alſo; for to inforce a Man by ſevere Puniſhment and Torture of Mind, to do that which doth not appear to be in his Power, or which the Law is already certified before, that there is not wherewithal to do (for ſo it was certified before the *Capias* againſt the Perſon was granted) is evidently againſt Juſtice. If it be reply'd, That it is upon a ſuppoſed Fraud that the Debtor is ſo impriſoned, it is alſo unjuſt — For to puniſh upon Suppoſition, or before Proof made, is unjuſt.

Why ſhould not the Debtor in this Caſe be preſumed in the Law to be innocent of Fraud, as in all other Caſes accuſed Men are, till the Contrary be proved? and it is alſo unjuſt, becauſe Impriſonment of the Debtor's Perſon, though he be

mangled

mangled and torn in a Thouſand Pieces, for the ſake of Creditors, yet, that cruel Method neither pays the Creditor his Money, nor diſcounts a Penny of the Debt.

My Notion is, Gentlemen, that all Means of Satisfaction muſt ariſe out of one of theſe following Circumſtances, either out of the Debtor's Credit, out of his Labour, Induſtry, out of the Beneficence of his Friends, or out of his own Eſtate; and every thing which conduces to weaken or diſable the Debtor in any of theſe Particulars, tends to even the Creditor's Prejudice and Diſadvantage.

I believe it will be eaſily allowed that the Debtor's Credit is ſufficiently ſtagnated by a Priſon; his Calling, Labour, Induſtry there, are denied; therefore this Method of Impriſonment is to the Diſadvantage of the Creditor; neither is it a Means to obtain the End propoſed.

Again, it is not agreeable to the Rule of Juſtice, to thruſt all Sorts of Debtors confuſedly together in a Heap into a Priſon, without regard to the different Qualities of Men, as they may be more or leſs guilty of Fraud or Obſtinacy, whether it be an honeſt or uſurious Debt; to more or leſs Subſtance of the Debtor, by which he muſt ſubſiſt or ſtarve in Priſon; or to the holding him one Year, or Twenty Years in Confinement. Some are great Debts for Thouſands; ſome are ſmall Debts for Trifles; ſome are ſuppoſed Debts, not yet proved; and, in reality, ſome are no Debts at all. This I believe, Gentlemen, I may very well venture to affirm, that Nine in Ten (for which People ſuffer a Life's Impriſonment) are uſurious Debts; and where there is one honeſt, real Debt, there are a Hundred falſe Ones, if thoroughly examined into.

I muſt

I muſt further, Gentlemen, ſtrongly affirm, this Gaol Juſtice is unjuſt in proportion — For the Rule of Juſtice, by the Law of God, is an Eye for an Eye, Blood for Blood; not a Man's Liberty, Credit, Perſon, Life, and all that is dear to him, for Goods or Money; and indeed it is contrary to all Juſtice and Reaſon, that the Law ſhould, by the racking Violence of Impriſonment, compel theſe Victims of ſlow Cruelty, *viz.* The Debtors, to pay that which the unrelenting Creditor, not fairly or honeſtly, but extortionably, uſuriouſly and deſperately ventured to truſt: Whereas my Adverſary may ſuggeſt, that theſe Violences, unknown in other Countries againſt Debtors, are carried on for the common Good, for the maintaining Contract, Commerce, *&c.* I am ſure I may anſwer, The Validity of this Argument is no ways brought about by the Effect; and further add, That there is no Part of the World where Debts are worſe paid than in *England.* Can any Argument go beyond Demonſtration? The only End and Effect is the Advancement of Cruelty, Oppreſſion, Murder, the Depreſſion of lawful Commerce, and utter Baniſhment and Extirpation of Chriſtian Charity, which is and ought to be the only Rule of Policy, to beget as well as maintain a flouriſhing State and healthy Government.

The ancient *Romans* conſtrued, and always reputed Impriſonment to be a Guard, or Safe-keeping of Slaves or Bondſmen; but a heavy Puniſhment to Men born free, as in *Britain*; and the Kings of *Britain* are Kings of Freemen, and not of Slaves. But let us look through thoſe ſeveral Ranks of People, who have already the Privilege of being freed from perſonal Arreſts, and ſee how far this does an Injury to the common Good — Have they not the ſame Truſt and Credit for Neceſſa-

Neceſſaries of Life, and many more Occaſions require, which other People have? but if the lower Part of them were to come and apply to the Parliament, and petition to be arreſted, in order to be truſted, then, indeed, I ſhould conclude, That Impriſonment for the common Good is neceſſary, becauſe People could not ſubſiſt without it.

In the next Place, let us conſider this Matter, as it relates to the higher Rank of People, who are privileged from perſonal Arreſts; but to explain myſelf more clearly, I do not mean the exempting any Man's real or perſonal Eſtate from being ſubjected, by the due Courſe of Law, to the Payment of his Debts: It is Freedom of Perſon and delivering Gaols I argue for; and by the way, it may be obſerved, that the Lawyers, I do not ſay the Law, for the Law and they do not always coincide, have found a Thouſand Chicaneries to cover an Eſtate; but when it comes to the Perſon, they fly away, you hear no more of them; becauſe it is preſumed there is nothing left to pay them for their Skill, or rather Tricks; the Perſon from that Time being a Property of the Bailiff, who delivers him to the Gaolers, to whom he thus becomes a Subject, to the End of his Life.

But I would ſtill willingly climb higher, and examine farther into the Circumſtance of thoſe of a higher Rank, who are privileged from perſonal Arreſts; I will not preſs too far upon them, the Equity of extending the ſame Right of Privilege to others, which the meaneſt Subject in *Britain* by Nature may claim, and with which they themſelves are inveſted by Law, and in an unenvied Poſſeſſion of by Uſage of Parliament. I would only ask this higher Rank, Whether the Freedom of their Perſons has not contributed to the publick Advantage? much leſs can it be ſaid that it has

ever been prejudicial to the Kingdom; therefore if the ſame Liberty was farther extended, by Parity of Reaſon, Impriſonment would be ſo far from tending to the publick Good, that it is only Liberty that can conduce to its Welfare, ſince it leaves the Heads and Hands of ſo many, to benefit both themſelves and the Publick, who are loſt in Priſon to the Publick, and to their Families? *Libertas omnibus rebus favorabilior eſt*, is a Maxim of the Civil Law, and upon the Reaſon of That is grounded much of our Common and Statute Law. In relation to the maintaining Contracts, Commerce, *&c.* as was before-mentioned, that, indeed, centers among the Merchants and mercantile People of the Nation, to whom the Law has already been ſo favourable, as to allow a Statute of Bankruptcy, upon any unfortunate Circumſtance or Accident in Trade, ſo that they become free by that Remedy; whereas, other People who are out of the Remedy of the Law, by not being of a Trade, or the poorer People, who have not wherewithal to defray the chargeable Expences of ſuch an Indulgence, are immured for ever in a Priſon.

I am ſorry to obſerve, that our late Acts of Parliament, for Relief of inſolvent Debtors, have not anſwered their kind Intentions, being cramped as to Times and Sums, though it is out of my preſent Purpoſe to digreſs any farther upon this Head, not having the leaſt doubt upon me, but the Wiſdom and Juſtice of the preſent Houſes of Parliament, will extend a neceſſary Relief to the forlorn Priſoner.

I come now to my next Head, Gentlemen, to deſire to be informed by what Law this Method of Impriſonment is juſtified; for I confeſs, to me it appears to be only the Abuſe of ſome Laws.

It is an undoubted Truth, that by the ancient Laws and *Magna Charta*, the Bodies of Free-Men were not to be impriſoned for Debt; and though by the Statute of *Malbridge*, Accomptants Bodies might be impriſoned till they paid the Arrears of Money received for their Lords, yet neither that nor any ſubſequent Law, can or ought to be extended contrary to the antient Laws of *England* and the *Magna Charta*. Statute Laws are made to maintain and confirm the Intention of our Fundamental Laws, by explaining and enforcing of them, and they can never be conſtrued to defeat and overthrow the great Law of Freedom that *Engliſhmen* enjoy by their Birth, which is the beſt Part of their Inheritance.

If it be urged, when they ſtrain the Conſtruction of ſome Statutes much later, nay, ſome Hundreds of Years later than *Magna Charta*; becauſe Men may make ſecret Conveyances in Truſt, to defraud their Creditors, and therefore their Bodies ought to be impriſoned; this is a very weak Ground, to deprive Free-Men of the Liberty of their Perſons; for are all guilty of ſuch fraudulent Conveyances? if not, it is abſolutely unjuſt to puniſh all promiſcuouſly. Beſides, if a Debtor is guilty, and can be proved to be guilty of ſuch Fraud, his Eſtate diſcovered becomes liable to his Debt, and then what needs any Impriſonment of the Body for Debt? and the Maxim of our Law holds good in this Caſe. *De non apparentibus & non exiſtentibus eadem eſt Lex.*

If it be ſuggeſted that the Debtor will not pay, through Obſtinacy, tho' he be able, let that Ability be proved, and the Law gives the Eſtate to the Creditor, whether the Debtor will or not. I might farther enlarge upon this Head; but I rather chuſe to conclude, that it is not to be ſuppoſed that theſe Methods, which have lately

crept into the Practice of the Law, can exceed the Wiſdom of the moſt antient Laws of this Kingdom, which have ordained the Recovery of Debts upon the Eſtate, and not upon the Perſon of the Debtor.

Gentlemen, In the earlieſt Times, when the firſt Laws were made, this was never the Practice, *viz.* the Impriſonment of Debtors; if we examine into Hiſtory, the wiſe Legiſlator *Solon*, never gave Power to the Creditor over the perſonal Liberty of the Debtor. The Perſon of the Debtor was always free in all Civil Cauſes; neither did the *Romans* think, that the Misfortune of Debt (which they never called a Crime) was to be puniſhed by the Barbarity of a Gaol. Even now in our own Days, if we look through all the States and Governments in *Europe*, I will be ſo bold as to ſay, That the Practice of no Country is ſo inhuman and mercileſs in this Particular, as that Part of *Britain*, a few Years ago called *England*, for the Laws of *North Britain* are otherwiſe.

I am not inſenſible of the common Opinion and Rumour of a few hired underling Profeſſors of the Law, and retail Dealers in Trade, that the redreſſing theſe Grievances of Gaols will hurt Credit; but if diſtinguiſhing Reaſon and Experience may be admitted to anſwer their Objection, it is demonſtrably againſt them. If they affirmed it would hurt deſperate and blind Credit, I readily grant it will, and it is very requiſite that pernicious Credit ſhould be hurt, when the Commonwealth is deprived and robbed yearly, nay, daily, of ſo many Subjects, by the deſtructive Conſequences of it, which is Impriſonment and Confinement of ſo many able-bodied Perſons, beſides loſing yearly ſuch a Number of Priſoners, choaked up and killed, I may ſay, murdered, by an idle Life,

Life, ill Air, and moſt pinching Hunger, Multitudes by Diſtempers, and many by deſperate Executions on their own Lives through Deſpair, beſides thoſe Perſons who are maimed and killed in putting this too ſevere Law in Execution, *viz.* the arreſting of Men naturally born free, of which we had lately a remarkable Inſtance. *

But ſome will ſay, if Mens Perſons are not liable to Impriſonment, how ſhall the Creditor recover his Demands? to which I make a very ſhort Anſwer, but a very reaſonable one: Upon the Debtor's Eſtate.——Only as this Kingdom did uſe to do formerly, ———and as other Kingdoms practiſe now.—Upon that let the Creditor ground his Truſt, and no farther; and, I think, I can make it plain, that it is neceſſary, juſt and expedient it ſhould be ſo, and no otherwiſe; for if it is otherwiſe, it muſt have perniciousConſequences; for Credit is like a Chain, and where there is one bad Link, that will occaſion a Separation and Breaking of the whole; whereas were all the Links good, it would endure the moſt violent Efforts; ſo one Man, who has not Subſtance or Eſtate, will break forty People of real Wealth.

If a Perſon was to argue ſo weakly as to ſay there would be no more Credit given if there were no more Impriſonments; I anſwer, Honeſt Trade, honeſt Contracts, honeſt Truſt, will, notwithſtanding, ſubſiſt in as great Plenty as ever. For while there is the ſame Uſe, the ſame Neceſſity, and the ſame Profit by Commerce, there muſt be the ſame Effect of Credit; for Neceſſity and Profit will not let the Manner or Means ſleep and lie quiet till the Effect is wrought and obtained.

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* Captain *Lutterell*'s Caſe.

It is moſt certain it hurts Credit, and does Injury to the Commonwealth to fling a Man in Gaol; his Calling, his Labour, his Induſtry are injured by Confinement.

Beſides, Impriſonment no ways puts it in the Power of a Man, or conduces to the Means of a Perſon's paying his Debts, but only ſerves to deſtroy the Debtor, his Family, his Dependants, and Eſtate; and to what Advantage? why only to bring Money to Attornies, Sollicitors, Gaolers, Bailiffs and Bailiffs Followers. And this is moreover ſo far from being any Advantage even to the Creditor, who purſues the unhappy Perſon, that, according to the Practice of theſe extortionable Gaols, it is juſt, equitable and reaſonable in the Priſoner not to pay the Creditor, but to keep his Eſtate in Gaol, to defend his own, his Wife's and Childrens Lives from periſhing through Want, conſidering all other Succours are denied.

For let us only examine the Circumſtance of a Perſon who is a dealing Man, of any Capacity whatſoever he may be; for under this Appellation I include, ſeveral Gentlemen of the Country and Eſtates. Such a Perſon being flung in Gaol, what a Havock does it make to that poor, unfortunate Gentleman, and his Circumſtances? His Eſtate is waſted, his Credit ſpoiled, his Fortunes, nay, perhaps, his Virtues are loſt for ever afterwards, nay, his Life is conſumed and murdered, while he lies in Priſon; the unavoidable Fees and Charges to which he is ſubject, the Extortions he muſt willingly ſubmit to, or hard will be his Fare; from the Neceſſity of this, he is compelled to try Heaven and Earth, but he muſt have Money. From the Reſtraint of his own Liberty he is obliged to truſt Friends and Servants, and God knows how few real Friends there are generally to a Perſon in this Circumſtance of

Life.

Life. From the Neceſſity of Confinement he is obliged to truſt them with the Sale of Lands, Chattels, Goods, with Receipts, Payments of Money, &c. and how often is he deluded by truſting to Friends after this Manner!

This cruel and barbarous Method of confining him, ruins his Reputation, deſtroys every thing that is dear to him; his Relations grow ſtrange, and forſake him; his Wife, his Children ſuffer with him, or leave him and turn profligate, in whoſe Miſeries he ſuffers as much as his own. Beſides, he now lies open to any Calamity that a malicious Adverſary will caſt on him, which he has no Opportunity of juſtifying, becauſe he can't be preſent to anſwer for himſelf; beſides, his Bail and Friends, which are but too often his neareſt Relations, they, perhaps too, are impriſoned upon his Account already, or in the Power of the Adverſary when he pleaſes to throw them there. What a Chain here is of Miſery, that this poor Wretch draws upon himſelf and half a dozen of the deareſt Friends he has in the World!

The poor Handicraft Man and Tradeſman, what cruel Severity does the mercileſs Creditor make him ſuffer, when he deprives him of his Time, his only Eſtate, and of his Labour, his only Income? Add to this, the King loſes a Subject, the Family a Husband or a Father, and in part, if not intirely, a Maintenance: The Place where he was ſettled, a Pariſhioner, and in his Room, perhaps, a Charge brought upon it. In this Caſe there is a known Maxim in the Civil Law, *Lucrum ceſſans & Damnum emergens.*

Were I to mention the Practice of other Countries; in *Holland* if a Man examines all the Gaols through the ſeven United Provinces, I will venture to affirm, that he will not find twenty

Priſoners

Priſoners detained in Gaol for Debt through all of them.

Is there not Wiſdom in the Frame and Conſtitution of that Government? Is there not Credit in *Holland*, and the other Provinces? Is there not Trade there? I might ſay, they ſubſiſt by Credit as much as by Trade. They know the real Prejudice and Injury the Practice of Impriſonment brings to Trade and Credit.

In *Germany*, *France*, *Italy*, *Spain*, nay, in *Turky* it ſelf, no Man is detained in Priſon for Debt above a Year and a Day, in which Time the Creditor has Power to ſell all the Eſtate of the Debtor, in performing which, the Wife's Proviſion is firſt deducted for the Relief of her and her Children, the reſt divided among the Creditors ſo far as it will go, and then the Debtor has his Liberty for ever, and he begins the World afreſh; and by the civil Law and ancient Conſtitution of this Kingdom before the Statute of *Capias*, this was a known Maxim, *Qui vult cedere bonis liberatus eſt a Debito.*

If the Debtor is content to relinquiſh his Eſtate to the Creditor, he is free from the Debt, ſo there needs no Impriſonment at all, but no Gentleman or Perſon of Quality may be impriſoned for Debts, his Eſtate is only liable thereunto..

Even *Mahomet*'s Alcoran forbids Impriſonment, 4 *Azoara* or *Cap. viz.* "If thy Debtor cannot "pay thee, ſtay till he can, and give him Alms, "for this ſhall be better for thee." —— Indeed among the *Jews* in *Turky* there is an Impriſonment of three Months Duration, and no more, and even during that Time it is no otherwiſe but upon Condition that the Creditor maintains the Debtor's Wife, Children and Family; ſo that even *Turky*, in this Particular, is leſs cruel than *England.*

But

But I muſt once again look into the private Advantage ſuppoſed to accrue by the impriſoning of Debtors, and I cannot but find it directly oppoſite to the Intereſt of every private Perſon. For it puts a Perſon out of Capacity of ever being able to pay his Creditor, tho' at the firſt he never ſo willingly would perform it; for the Moment he is ſunk into a Priſon, if he is not deprived of his Honeſty, (which it is ten to one but he may be) being very liable to be tainted by deſperate People abandoned to all ſorts of Wickedneſs, he is moſt certainly ſoon deprived of all Spirit, Courage and Induſtry; he falls into the way of living by his Wits (as they call it,) and that ſort of Wit is whetted by Neceſſity.

Every Man is raiſed in their ſort of Government, or *Gaol-archy*, I cannot rank it under any other Species of Government; I ſay is preferr'd, and looked upon according to his Ingenuity; and happy is he that can, by his Art, obtain the Smiles of his Gaolor: but I am going into a Subject below a Gentleman's Pen or Thoughts, and I ſhall chuſe (though with great Grief) to take a Survey of the honeſt Priſoner, and over him I could ſet my ſelf down, and ſhed a Flood of Tears, ſince I can hardly think that the Abuſe of the Law is grown ſo far as to forbid a Man to weep.

The Man of Virtue, the Moment he arrrives at thoſe gloomy Regions, with what Shame, with what Abhorrence does he look into the moſt ſecret Receſſes of his Soul! ——— If a ſudden Frenzy does not ſeize him, his Spirits grow debaſed, his Underſtanding ſoon fades away, his Will becomes depraved, and every other Faculty of his Mind is weakened. Memory, indeed, is the laſt Power of the Mind the poor miſerable Wretch retains, and that ſerves only to compleat his Calamities. Unhappy Man! If the Abuſe of

the Law is ſo ſevere to you, as to permit the Creditor to deſtroy his Priſoner, by a lingring and tedious way of dying, might it not as well authorize him to take ſo many Ounces of Blood daily from him, 'till ſuch time as he, or his Friends, could raiſe the Money.

The Creditor then would have ſomething in lieu of his Money. ——— He would have BLOOD.

I am, Gentlemen, not inſenſible there have been Tyrannies, where the Unhappy have been denied even Complaint; but, alas! whom have Priſoners to complain to, but to Irons, Stone Walls, and their more obdurate Gaolers?

From whence can ſo great a Cruelty, ſo rigid a Severity proceed? why, if the Creditor would but deliberately reflect, he would find upon a juſt Scrutiny into his own Conſcience, the real Seeds of a tyrannical Diſpoſition, and that it ariſes from an Inhumanity and Barbarity of Temper, and from a Pride in the Bleſſings of Liberty, which he himſelf enjoys. He will find likewiſe the urging Malice of a revengeful Hatred, diſdaining the leaſt Wrong, or loſing any thing of what his Covetouſneſs, or, perhaps, Extortion called his own.

Theſe Principles, and theſe Paſſions, I am ſure no Chriſtian ought to put in Practice, ſince nothing is ſo repugnant to the whole Tenor of the Chriſtian Religion, as an unforgiving Temper, and nothing more ſuitable to the Character and Duty of a Chriſtian, than Mercy.

But, Gentlemen, after urging theſe Reaſons, my watchful Adverſary may make this Reply, That among the *Romans* the prodigal Man was puniſhed with great Severity.

Upon

Upon this it is to be conſidered, that we have no Sumptuary Laws in *Britain* — Where many accidental Advantages incline People to extraordinary Expences —— A fertile Soil, an extenſive Trade, increaſe Riches, and unavoidably lead into a plentiful Way of living. The Delicacies of both the *Indies* flow in upon us; the delicious Wines of foreign Countries diffuſe themſelves thro' every Part of the Commonwealth.

It is a Maxim that has been frequently advanced, That the Liberality of the Rich, and the Induſtry of the Poor, are the Source of the Wealth of every Country; and ſhall one of the former be locked up for ever for employing the latter. A Man may miſcompute, and his Paſſions may get the better of him, but it is hard he ſhould lie under a Puniſhment ſo inadequate to the Nature of his Crime, as Loſs of Liberty, for a Fault, which, Politically ſpeaking, has done good to his Native Country: What an Infatuation is it, that inſtead of employing the Poor in Manufactures, inſtead of Manning our Royal Navy, and ſupplying our Merchant Men with Sailors, we lock up, perhaps, a Hundred and Twenty thouſand Men in Priſon, ejected out of the Care of the Government, like baniſhed and outlawed People?

If we were, Gentlemen, to take a nearer View of theſe Victims of Avarice, doom'd to Deſtruction in the Gloomy Manſions of a Gaol, it ſhocks Nature to behold ſo many of our Fellow-Citizens, and Fellow-Chriſtians eaten up with Diſeaſes. The Priſon Diſtemper being more frequent, and more certain than the Small Pox; and if they out-live theſe, the unhappy Priſoner may ſtill, by the ill Examples he is ſurrounded with, be drove into the Loſs of his Integrity, ſcarcely ever to be recovered again.

This corrupts the Manners of the Age; this occaſions our frequent Executions, without any Amendment in the lower Rank of People.

It has been obſerved, that in the Places in *France* where Galley Slaves are fixed, there are more enormous Crimes committed from the Infection of thoſe guilty People, than in any other Parts of the Dominions of that great Kingdom.

If, Gentlemen, we take a View of the Priſoners for Debt, of a higher Rank, we ſhall, for the moſt part, find Credulity and Flattery to be the Cauſe of their Misfortunes. That Generoſity which might have been turned to the leading them into brave Actions for the Good of their Country, has by artful Sycophants been perverted to their Ruin; the Tradeſmen oftner tempting them to run into their Debt, and ſoon after the eaſy believing Gentleman has ſwallowed the Bait, he is arreſted, or threatened to be arreſted, that an Advantage may be better taken of making an exorbitant Bill than otherwiſe would be allowed of.

It is very ſeldom the fair Trader flings a Man into Priſon: Let us appeal to the Characters and Profeſſions of the mercileſs Creditors, it will be found, that they are Pawn-Brokers, pettyfogging Attornies, and Sollicitors; in a Word, Extortioners of one kind or another.

It is theſe People that have made ſo many Seamen quit their native Country, and ſeek their Liberty in the coldeſt or hotteſt Climates, more fortunate to them, than the Abuſe of the Law permits their own to be.

Theſe devouring Creatures can make no better Compenſation for the Injury they have done their Country, than by ſupplying the Places in the Naval Service, of thoſe whom they have driven out of it. What Reſt, what Quiet would it give to the Land, if ſome Thouſands of our dirty Attornies

and

and Sollicitors, with their Bailiffs and their Followers, were under a freſh Gale bound for *Guinea*, or ſome of the Plantations?

But I digreſs, and now come to the laſt Head I intended to ſpeak upon, which is, to prove that this cruel Method of impriſoning Debtors, is againſt the Benefit and Good of the Commonwealth, and all Civil Societies.

According to the antient and beſt grounded Computation, it is reckon'd, the Number of People in *South-Britain* is upwards of Ten Millions; but at preſent, *London* ſingly is computed to contain One Million Three hundred thouſand Souls. The Bodies of Men are, without doubt, the moſt valuable Treaſure of a Country: Suppoſing there are a Hundred thouſand Perſons prevented from Labour by Debts, or being in Gaol, then the Loſs to the Kingdom from this Hundred thouſand People, amounts, according to Sir *William Petit*, to Seven Millions, computing each Perſon to be capable of earning 12 *d. per Diem*; he farther computes Six Millions of People to be worth 417 Millions of Pounds *Sterling*, each Head he computes is worth Sixty-nine Pounds, at Seven Years Purchaſe.

Now, if it happens in the Nation, that Two hundred thouſand Perſons are prevented from Labour, then the Nation is loſer of 14 Millions, and ſo proportionably to the Numbers of impriſon'd Debtors; and I may ſafely affirm, that there are many Hundred thouſands of Souls, whoſe Labour the Publick is deprived of, through the Fear of a Priſon and Confinement.

The Dread of perpetual Impriſonment drives Numbers from their Families and Callings, and proves in Effect as much Loſs to the Benefit of the Kingdom, as thoſe who are actually under Confinement; and the Manufacturer, who flies for

ſhelter

ſhelter to foreign Parts, by him you are not only deprived of his Work, but he teaches your Arts to the Country to which he flies for his Liberty; ſo that not only you loſe ſo much *per Annum*, by the Deprivation of his Labour, but there is an additional Advantage perhaps to your Enemies.

I could wiſh, very much for the Talent of that ingenious Gentleman, Sir *William Petit*, to make appear more demonſtrably, the vaſt Advantages numerous Bodies of People employed in Trade or Manufactures, bring to the Publick Good: But as I treſpaſs upon your Time, and am not entered ſo far into political Arithmetick, as to give a very circumſtantial Account of this, I ſhall proceed; and laying theſe Computations aſide, I come upon more common Arguments to prove that Impriſonment is not for the Benefit of Civil Society, becauſe, if the Creditor was not allowed the ſevere Privilege of impriſoning the Debtor, then it would follow, that the Debtor, notwithſtanding he had relinquiſhed his whole Eſtate, in order to the Payment of his Debts, yet having his Perſon free and at liberty, his Occupation and Endeavours free, finding that his Friends had not deſerted him, nor his Enemies ſullied him with the ignominious Name of having been a Priſoner, he is ſtill in a Capacity to render Honour and Service to his King and Country, nay, and perhaps, by laudable Actions, to get another Eſtate, and a new Advancement of his own private Fortune; whereas, as the Caſe now ſtands, when once he is ſo unhappy as to be locked up in a Priſon, he is utterly diſabled from paying any of his Debts, to promote his Fortune, or to do his Majeſty or Country any Service.

If Recovery of Debts were to be made only upon the Eſtate of the Debtor, then it would follow alſo, that inſtead of giving a Help, by extortionable

tionable Fees, to the pampering luxurious Gaolers, &c. in their ravenous Appetites, that Money would be employed in cultivating Lands, and promoting lawful Trade, whereby the Poor in Town, and the Induſtrious in the Country, would be happily employed.

Truth, Honeſty, and an unſullied Character, would from that Time become the higheſt Ambition in People; and the Man of Integrity, Ability and Honeſty, from that Time would be moſt employed, moſt ſought after, and moſt eſteem'd through the Kingdom of *Great-Britain*.

So, Gentlemen, have I finiſhed my Plea, and now I rely on you to relieve my Client, that he may be ſet at free Liberty; if not, let me conjure you to examine into the Cauſe of his Death, provided he is not conſtrained to put an End to his own Life and Misfortunes, through his own cruel Sufferings; nor wonder that he haſtens his own End, for when he has loſt his Liberty, why does he remain amongſt Diſeaſes and Chains?

But, methinks I ſee the Rays of a coming Relief, which, like the Sun, who glads the Earth by his Preſence, diſſipates all gloomy Deſpair; for the Parliament of *Great Britain* aſſembles to give their kind and powerful Aſſiſtance to the forlorn Priſoner. The very Rumour of this has already awaked the conſcious Gaolers, thoſe nefarious Butchers of their Fellow-Citizens; they ſeem now to be aſhamed of a Tyranny they can no longer maintain; they deſiſt from their former violent Methods, when they find they can no longer paſs uncenſured. Out of a tender Compaſſion now, forſooth, they turn out, in Shoals, theſe miſerable Objects of ſlow Cruelty, who are their Priſoners, when they have no further Proſpect of Gain from them; in order, that when they come to make a due Return of the Num-

bers

bers of their ſhackled Subjects, they may appear leſs upon Paper.

Some of theſe poor Wretches have been ſo precipitately hurried into open Air, that as I am informed, out of one ſmall Priſon, Eight of Sixteen of theſe miſerable Objects of your Compaſſion, have actually died within Three Days after their Releaſe: So unaccuſtomed were they to the common and natural Privilege of human Kind, the open Air.

The Gaolers, haughty as they were, now come and court them, to hinder their Complaints, and, for a while, lay aſide their proud Commands and cruel Threats.

But I enter too far among ſuch Executions, and ſince there is compaſſionate Relief in View, after this generous, this beneficial Act to the Commonwealth is paſſed, I have ſomething to mention farther.

I propoſe, Gentlemen, there be erected a Column of the fineſt Marble, which ſhould be ſet up on the moſt elevated Ground towards our Southern Seas; the Dimenſions of this Column ſhould be Two hundred and Fifty-ſix Feet in Height, its Diameter Twenty-four Feet and $\frac{2}{8}$; it ſhould have in the Hollow of the Cylinder Three Hundred and Sixty-Eight Steps, which ſhould be illuminated by Eighty-ſix Windows in the Sides; this Column ſhould conſiſt of Sixty-ſix Pieces of Marble.

The Pedeſtal muſt be Twenty-nine Feet in Height, and the Baſe Forty-two Feet, and the Pedeſtal is to conſiſt of Sixteen Pieces of Marble.

In the Spiral Line, which waves up the whole Cylinder, ſhould be engraved the moſt remarkable Parts of our *Engliſh* Hiſtory, where the Liberty of the Kingdom has been vindicated and ſecured,

from

from the Time of obtaining *Magna Charta*, to our happy Revolution in 1688.

The Capital of this mighty Column ſhall be Eight Feet in Height, upon whoſe Summit muſt be placed a Globe, enlightened as a Pharos, for the Service of the neighbouring Coaſts.

Upon the Top of this Globe ſhall be a Figure, Twenty-ſix Feet high, repreſenting LIBERTY.

Upon one of the four Sides of the Pedeſtal, an exquiſite *Baſſo Relievo* ſhall expreſs a *Genius* ſupporting Two Figures, in Royal Habits, Their preſent MAJESTIES.

On one Side of them ſhould be one Figure of Honour and Magnificence; and on the other Side, *Pallas* ſitting with Shields, and other Ornaments and Trophies of War.

Two other Sides of this Pedeſtal I'll leave to the World to embelliſh, with ſuch Figures and Decorations as their Invention and Gratitude may ſupply them with.

But to conclude, upon the Fourth and laſt Side, ſhould be wrote in Capital Letters;

TO
GEORGE AND *CAROLINE*,
THE
PRESERVERS OF THEIR PEOPLE,
THE
RESTORERS OF THE ANCIENT, LEGAL
PRIVILEGES AND LIBERTIES
OF
GREAT BRITAIN.

FINIS.

BRITISH MUSEUM
4 MAY 37